

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

WENDY BALL,
Plaintiff,

v.

DUTY FREE AMERICAS, INC.,
et al.,
Defendants.

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CIVIL ACTION NO. H-08-0232

MEMORANDUM AND ORDER

Plaintiff Wendy Ball filed this lawsuit against Defendants Duty Free Americas, Inc., Falic Fashion Group, LLC, Christian LaCroix S.N.C., Christian LaCroix North America, LLC, and Nicolas Topiol. In accordance with the parties' Joint Stipulation [Doc. # 48], the Court on December 9, 2008, entered an Order Granting Joint Stipulation of Partial Dismissal [Doc. # 49]. In the Order, the Court dismissed Plaintiff's age discrimination claims against all Defendants and dismissed all claims against Defendants Falic and Topiol. Plaintiff's claim that she was retaliated against for refusing to violate Customs laws remained pending against the other Defendants.

On December 23, 2008, Defendants Falic and Topiol filed a Bill of Costs [Doc. # 53] in the amount of \$1,624.09. As provided for by Rule 54(d)(1) of the Federal Rules of Civil Procedure, the Clerk of Court taxed the costs the next day. The


case is now before the Court on Plaintiff's Motion to Retax Costs ("Motion") [Doc. # 54], to which Defendants Falic Fashion Group, LLC ("Falic") and Topiol filed a Response [Doc. # 56], and Plaintiff filed a Reply [Doc. # 57].

A party, within five (5) business days after costs are taxed by the Clerk, may seek Court review of the Clerk's action. *See* Fed. R. Civ. P. 54(d)(1). In this case, the Clerk of Court taxed costs on December 24, 2008. Because holidays are not included in the five business days, the deadline for Plaintiff to seek review of the costs taxed by the Clerk was January 6, 2009. Plaintiff's Motion, filed December 30, 2008, is timely.

There is, however, a more fundamental bar to the substantive review of the costs at this time. The Local Rules of the Southern District of Texas provide that a bill of costs shall be filed "within 14 days of the entry of a final judgment." *See* S.D. Tex. L.R. # 54.2. There has not yet been a final judgment entered in this case and, therefore, the bill of costs filed by Falic and Topiol was premature. Accordingly, it is hereby

ORDERED that Plaintiff's Motion to Retax Costs [Doc. # 54] is **GRANTED** and the costs taxed by the Clerk of Court on December 24, 2008, are **VACATED**. Defendants Falic and Topiol may refile their bill of costs within 14 days after final judgment is entered in this case.

SIGNED at Houston, Texas, this **27th** day of **January, 2009**.



Nancy F. Atlas
United States District Judge